

**Application Serial No. 10/573,693  
Attorney Docket No. 294-246 PCT/US/RCE  
Response to November 24, 2009  
Non-Final Office Action**

**REMARKS**

The Non-Final Office Action mailed November 24, 2009 and the references cited therein have been carefully considered. Claims 1-13 and 15-21 are now pending in the application. Claims 1, 8-13, 15, 16, and 19-21 are hereby amended and Claims 22-26 are hereby newly added. The amendments to Claims 1, 8-13, 15, 16, and 19-21 are intended to clarify that aspect of the claims related to the buoyant bodies and/or ballast means. This alternative language has been replaced with the recitation that the buoyant bodies have a ballast capacity. Support for this recitation can be found in the original disclosure as found in the published application for the subject application at paragraph [0013] and more fully throughout the specification and claims. Additionally, new Claims 22, 23, 25 and 26 add recitations directed to those aspects of the invention indicating that the apparatus can be brought at least in part above water which includes the breathing surfaces. Support for these new claims can be found in paragraph [0013] of the specification, as well as more particularly in Figures 3 and 4 of the drawings. Newly added Claim 24 merely clarifies that the breeding surfaces are planar shellfish breeding surfaces, which is clearly disclosed throughout the specification, including the drawings, and claims. Thus, no new matter has been added by the amendments herein. Applicants respectfully request entry of these amendments and specifically respond below to the issues raised in the subject Office Action.

**Claim Rejections under 35 USC § 102(b)**

In the Office Action, Claims 1-3, 5-7, 11, 13 and 15-21 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,892,672 to Klein (**Klein**). The Office Action contends

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that the Klein patent discloses all the features of the rejected claims. Applicants respectfully traverse this rejection.

Klein discloses a fish-breeding apparatus which includes a frame supporting a plurality of breeding cages. In Klein, fish are introduced into the cages, fed and grown within the cages so they can be subsequently removed (i.e., “harvested” -- see Klein column 1, lines 21-28). In particular, it is noted in Klein that such a method of breeding is “not adapted to all kinds of fish.” Accordingly, it should be noted that the disclosure of Klein is totally different from a shellfish breeding apparatus according to aspects of the invention. The subject Office Action fails to explain how the “surfaces” of a mesh cage are considered “breeding surfaces” or how they include “growing elements.” The cage is merely intended to contain the fish. While the fish might grow in the cage, they can not be said to grow on the cage.

Also, in Klein the breeding cages 11 are described as having a “purse-like conformation, being convex at the bottom.” While the description of being “purse-like” might be imagined as two loose vertical sides meeting at a convex or rounded bottom, the drawings show cylindrical-shaped containers with the described convex bottoms. In contrast, the claimed invention recites “a series of breeding surfaces are provided, which breeding surfaces extend substantially parallel to each other above each other.” Thus, when considering Klein the only surfaces of the breeding cages 11 that might be considered to extend parallel to one another are the vertical walls of the cages. However, such vertical walls cannot be said to also be disposed “above each other” as recited in Claim 1. What is more, even if the vertical cage surfaces of Klein were interpreted as breeding

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surfaces (which point Applicant traverses), such surfaces could not be said to be disposed at an angle to a longitudinal axis of the cylindrically shaped buoyant bodies as further recited in Claim 1. The vertical walls of the breeding cages 11 in Klein extend parallel (not at angle) to the vertical axes of buoyant bodies 25 as clearly shown in Figure 5 of Klein; and no other “surfaces” are disposed “above each other.” Additionally, Claim 15 more specifically recites that the “apparatus is positioned in open water with the breeding surfaces extending substantially horizontally,” which is further distinguished from Klein. No portion of the cages is shown to be extending substantially horizontally, nor are such cage surfaces “extending above each other” as recited in Claims 1 and 15.

According to an aspect of the invention, the breeding surfaces are substantially flat and disposed such that they extend substantially horizontally. The cages in Klein cannot be considered breeding surfaces, as fish do not attach to the open structured wall of the cages. In contrast, the breeding surfaces according to an aspect of the current invention allow shellfish to attach thereto. More specifically, the shellfish attach to growing elements provided on those breeding surfaces as further recited in pending Claim 2. It should be further noted that it is unclear from the pending rejections what features of Klein could be considered rows of growing elements arranged substantially next to each other thereby forming the breeding surfaces. Also, with regard to the growing elements, Klein clearly does not teach having parts of the breeding surfaces removable individually or as a group as more notably recited in pending Claim 6. Similarly, Claim 7 recites upstanding edges being provided for preventing the shellfish being carried along from the breeding surfaces by flowing water. As noted above, Klein clearly is not applicable to breeding shellfish. Additionally, while the uppermost portion of the apparatus in Klein can be raised to the water’s

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surface, the buoyant bodies nor breeding surfaces can not be raised above water level as recited in new Claims 22, 23, 25 and 26.

Accordingly, Klein does not teach all the elements of the claimed invention and thus Applicant respectfully requests reconsideration and withdrawal of the rejections based on Klein.

**Claim Rejections under 35 USC § 103(a)**

In the Office Action, Claims 1-10 and 15-18 are rejected under U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,266,509 to Gollott et al. (**Gollott**). Applicants respectfully traverse this rejection for the same reasons set forth in response to the various previous Office Actions issued in this matter. In particular, it should be noted that Gollott simply does not disclose buoyancy bodies with ballast capacity as currently recited in the claims. Therefore, it is believed that the amendment presented herein render the rejections related to Gollott moot. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. §103(a) based on Gollott. c

In the Office Action, Claim 12 is rejected under 35 U.S.C. §103(a) as being unpatentable over Gollott in view of U.S. Patent No. 6,044,798 to Foster et al. (**Foster**). Applicants respectfully traverse this rejection for the same reasons set forth above with regard to the rejections based on Gollott alone. Although Foster is cited for teaching a series of units used for aquaculture, it fails to teach the missing elements identified above. Including for example, the at least two mutually spaced apart buoyant bodies with a ballast capacity and/or the breeding surfaces disposed between

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the buoyant bodies. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejections under 35 U.S.C. §103(a) based on Gollott in view of Foster.

Applicants further submit that Claims 2-13 and 16-26, which ultimately depend from Claims 1 and 15 are patentable over the art of record by virtue of their dependencies. Further, Applicants submit that Claims 2-13 and 16-26 define additional patentable subject matter in their own right. Therefore, it is respectfully submitted that Claims 2-13 and 16-26 also are in condition for allowance.

**Conclusion**

Entry of the amendments herein and favorable consideration of Claims 1-13 and 15-26 are hereby solicited. In view of the foregoing amendments and remarks, this application should now be in condition for allowance. A notice to this effect is respectfully requested.

If the Examiner has any questions or suggestions to expedite allowance of this application, he is cordially invited to contact Applicant's attorney at the telephone number provided.

Respectfully submitted,

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